UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

THE LUCAS THEATER FOR THE ARTS, INC.

Employer

and Case 10-RC-15256

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, LOCAL UNION #320

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[1] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is a Georgia corporation with an office and place of business located in Savannah, Georgia, where it is engaged in the operation of a theater. During the past twelve months, the Employer has received gross revenue in excess of $500,000. During this same period, the Employer, from its Georgia operation, purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of Georgia. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

[1] All parties submitted briefs, which have been duly considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

The parties are in agreement that the appropriate unit should include essentially all stage production employees.[2] They disagree, however, on the status of one individual, Wayne Roelle. The Employer contends he is a supervisor and agent of the Employer within the meaning of Sections 2(11) and (13) of the Act and hence should be excluded from the unit. The Union asserts that Roelle exercises no authority in the interests of the Employer and should therefore be included in the unit as an employee.

The Employer was incorporated in 1987. On December 1, 2000, the Employer commenced operations. In January 2001, the Employer began staging live performances and plays at its theater. Richard Rossey, the Employer Technical Director, is responsible for coordinating the intricacies of the various Employer productions as well as making sure the productions are properly staffed with stage crew workers. Paul Couch, the Employer's Executive Director, testified that Rossey reports directly to him, and that he holds Rossey responsible for hiring decisions with respect to production crews. The 3 other supervisors, the stage manager, lighting director and house audio engineer, all report directly to Rossey.

[2] The parties stipulated and I find that the following individuals are supervisors and hence are excluded from the unit: Sommer Howard, Stage Manager; Tyler Littman, Lighting Director; Richard Lee Towns, House Audio Engineer; Richard Rossi, Technical Director; and Paul Couch, Executive Director.

Roelle is currently a business agent for the Petitioner. The record shows he introduced himself to Rossey in January 2001, a few days prior to the Employer's staging of the production "Godspell". For that production, Rossey needed about 25 to 30 stage employees. Roelle introduced himself as a Union representative and gave Rossey his business card, which had the Union name and logo on it. At the time, Roelle was a Union call steward. Roelle later was elected a Union business agent in about May 2001.

In their initial meeting, Roelle suggested that he could refer stage employees for the Employer's various productions, including "Godspell". The two men discussed the number and types of stage employees the Employer would need for the production. They then verbally agreed that Roelle would refer stage employees for the production. Rossey testified that he believed that Roelle was acting on behalf of the Petitioner in providing the stage employees. The record also shows that as a business agent of the Petitioner, Roelle is required to maintain a referral list and operate a referral service for employers. He also has authority, on behalf of Petitioner, to represent the Petitioner in all dealings with employers, but remains under the authority of the Petitioner's Executive Board.

Prior to the "Godspell" production, Roelle provided Rossey with a copy of the Petitioner's casual labor agreement. Although the Employer did not sign that agreement, many of its provisions, including wage rates and overtime were followed by the Employer for the "Godspell" production. Between the closing of "Godspell" and the opening of the next production, Rossey informed Roelle that management was not completely happy with the agreed upon arrangement. As a result, Rossey and Roelle negotiated another agreement concerning wages and certain benefits for those stage employees referred by Roelle, consistent with the Petitioner's normal referral procedures.

The two men verbally agreed to a subsequent wage and benefit arrangement sometime in about early October 2001, which remained in effect as of the date of hearing.

Since "Godspell", the Employer has staged about 20 shows. Of those 20 productions, Rossey staffed about six on his own. These were smaller productions, requiring less than 20 stage employees. Roelle has referred stage employees to Rossey for the Employer's larger productions. Normally, Rossey calls Roelle about a week or two prior to the commencement of a production to request labor. Rossey specifies the number and type of stage employees he desires. Rossey also notifies Roelle if there are any special skills required for any of the required employees.

On occasion, the Employer has requested certain individuals from Roelle by name and Roelle has complied with those requests. Roelle is not compensated for supplying labor to the Employer and does not contact persons from his referral list while at the theater. In his role as a Union Representative, Roelle also refers stage employees to other area employers, consistent with the Petitioner's normal referral procedures.

The record is clear that Roelle has also worked for the Employer as a stage hand for a number of productions. He began his employment in January, 2001, and like all first time applicants for employment with the Employer, he was required to complete a job application prior to being hired. Like the other stage employees, Roelle's status is on-call, part-time. He is an employee of the Employer only when working on a show at the Employer's theater. Roelle has worked in various stage employee classifications for the Employer and is paid the same wage rate as the other employees working in that particular classification. Roelle reports to the same supervisor as the other stage employees working in his particular classification. On at least some of the productions,

Roelle has served in the classification of Union steward. At least three other employees have also served in that position, including the president of the Local. Roelle and Rossey negotiated the pay for that position, like the other stage employee classifications.

Roelle does not have an office at the theater. Further, there is no record evidence that he possesses or has exercised any authority to fire, discipline, transfer, promote, grant time off or direct the work of other employees. Unlike the stipulated supervisors, Roelle is an hourly employee, who is eligible for overtime. He does not attend the Employer's bi-weekly supervisory meetings, and is not entitled to paid vacations or Employer provided health insurance. Other than referring individuals to the Employer consistent with the Petitioner's normal referral procedures, Roelle plays no role in the Employer's hiring policies and procedures.

It is well established that the party who asserts that an individual possesses supervisory status bears the burden of demonstrating the actual exercise of supervisory authority by the individual in question. *Bennett Industries*, 313 NLRB 1363 (1994); *Ohio Masonic Home, Inc.*, 295 NLRB 390, 393 (1989); *Soil Engineering & Exploration Co.*, 269 NLRB 55 (1984). Further, the specific language of Section 2(11) requires that such authority be exercised "in the interest of the employer". See also *NLRB v. Kentucky River Community Care*, 532 US 706, 167 LRRM 2164, 2167 (2001). In view of the foregoing and the record as a whole, the undersigned finds that the Employer has failed to establish that Roelle possesses supervisory authority as defined in the Act. The record establishes that Roelle has regularly worked for the Employer as a stage hand and is treated no differently than any other stage production employees. There is no evidence that as a stage hand he has ever exercised any authority to hire, fire, discipline, grant

leave or adjust employee grievances. The sole function performed by Roelle relied upon by the Employer is that he has referred labor to the Employer.

It is well settled, however, that a union's referral of labor to an employer does not automatically render the union an "agent" of that employer, acting in the interests of that employer. *See*, *Teamsters Local 357 v. NLRB*, 365 U.S. 667 (1961); *Mountain Pacific Chapter*, 119 NLRB 883 (1957). In *General Building Contractors Assn. V. Pennsylvania*, 458 U.S. 375 (1982), the Supreme Court noted that a union's operation of a hiring hall does not automatically establish that the union is an agent or servant of the employer, or that the union has performed a function on behalf of that employer. The Court stated that "the relationship between an employer and the union that represents its employees simply cannot be accurately characterized as one between principal and agent or master and servant. Indeed, such a conception is alien to the fundamental assumptions upon which the federal labor laws are structured." Id.at 393. In *Wolf Trap Foundation*, 287 NLRB 1040 (1988), the Board also refused to find a principal-agent relationship between an employer and union that were parties to a referral system.

It is clear from the record that Roelle referred individuals to the Employer as an agent of the Petitioner. Roelle initially introduced himself as a Union official, presented the Employer with his Union business card as well as a Union casual labor agreement. Rossey acknowledged he believed Roelle was acting as an agent of the Petitioner. Further, in his capacity as a Union official, Roelle is required by the Petitioner to refer individuals to various industry employers in the area, including the Employer herein.

Based on the foregoing, and the record as a whole, the Employer has failed to present sufficient evidence to establish that Roelle possessed supervisory authority in the

interests of the Employer or acted as an agent of the Employer within the meaning of Section 2(11) and (13) of the Act. In making referrals to the Employer, there is no evidence that Roelle was acting on behalf of any entity other than the Petitioner. There is no evidence that the Employer exercised any control over Roelle in his referral functions. Moreover, there is no evidence that Roelle exercised any authority to fire, discipline, transfer, promote, grant time off to, or direct the work of other employees during the periods he worked for the Employer as a stage hand. Rather, the evidence shows he was treated by the Employer as any other employee in his classification. In view of the above, I shall include Roelle in the unit found appropriate herein.[3]

The parties stipulated, and finding nothing to the contrary, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All stage groups, including stage hands, electricians, sound persons, riggers, props persons, wardrobe persons, stage light technicians, stage sound technicians, prop makers, set painters, scenic artists, spotlight operators, truck loaders, stage rail technicians, arbor loaders and all stage workers employed by the Employer at its facility located in Savannah, Georgia, but excluding all other employees, office clerical employees, guards and supervisors as defined by the Act.

Inasmuch as the unit employees are engaged in the production of theatrical presentations and are hired for particular productions, the parties stipulated and I find that

[3] The Employer has collaterally asserted that Petitioner's underlying showing of interest is tainted by Roelle's involvement in soliciting employees to sign Union authorization cards. In view of my determination herein with regard to Roelle and in the absence of any evidence of interference, coercion or restraint, I hereby deny the Employer's request to dismiss the petition on this ground.

use of the eligibility formula set forth in American *Zoetrope Productions, Inc*., 207 NLRB 621 (1973) is appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed by the Employer on at least two productions during the year preceding this Decision and Direction of Election, and who were not terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Alliance of Theatrical Stage Employees, Local Union #320.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB Region 10 Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303-1504, on or before January 2, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC, 20570. This request must be received by the Board in Washington by January 9, 2002.

DATED this 26th day of December, 2001, at Atlanta, Georgia.

/s/ Joseph V. McMahon
Joseph V. McMahon, Acting Regional Director
Region 10
National Labor Relations Board
Suite 1000, Harris Tower
233 Peachtree Street, NE

Atlanta, Georgia 30313-1504

177-8560-1500
177-8580-7900
712-5028-7570-8900